Supreme Court, U.S.
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No. 92-988

In The

Supreme Court of the United States

October Term, 1992

KATHLEEN LEISHMAN-DONALDSON, WILLIAM J. DiGIOVANNI and JOHN A. BECKER, Individually and in their Official Capacities as Bailiff and Deputy Bailiffs of the Shaker Heights Municipal Court,

Petitioners,

vs.

RONALD F. BALAS,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

PETITIONERS' REPLY BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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ARGUMENT

This brief reply is intended to point out the similarities between this case and a case recently accepted for review by this Court, and to suggest that the cases be resolved simultaneously in order to avoid inconsistent rulings.

As the Petition for Certiorari discusses in more detail, this case involves the scope of the absolute quasi-judicial immunity doctrine as it applies to municipal court bailiffs who investigated the credentials of the respondent, Ronald F. Balas. Respondent had been appointed to provide alcohol counseling services to a criminal defendant as part of the defendant's sentence. Respondent alleges that the bailiffs defamed him, harassed his acquaintances and otherwise violated his constitutional and common law rights during the course of their investigation. The bailiffs claim that they are protected by the doctrine of absolute quasi-judicial immunity because they were assisting the municipal court in its exercise of a judicial function, namely the sentencing of a criminal defendant, and were performing their investigation at the court's request. The Sixth Circuit determined that at least some of the bailiffs' acts were administrative rather than judicial, and that the bailiffs were not protected by absolute quasi-judicial immunity. The question presented to this Court for review is whether the bailiffs were performing a judicial function and are therefore entitled to absolute immunity

for any acts occurring during their investigation of respondent's credentials.[1]

This Court recently accepted review of *Antoine v. Byers & Anderson, Inc.*, docketed as Case No. 91-7604. *See Antoine*, 61 U.S.L.W. 3284 (October 13, 1992). In *Antoine*, the plaintiff, a convicted criminal defendant, brought an action against the court reporter who was hired by the federal court to transcribe the proceedings during the plaintiff's criminal trial. The court reporter had failed to complete a transcript of the proceedings, and had lost a substantial portion of the notes and tapes of the proceedings, thus delaying the plaintiff's appeal of his conviction for four years. The district court and the Ninth Circuit both agreed that the court reporter was performing a judicial function in attempting (but failing) to transcribe the events during the trial, and that she was protected by absolute judicial immunity. *See generally Antoine v. Byers & Anderson, Inc.*, 950 F.2d 1471 (9th Cir. 1991). The question accepted for review by this Court in *Antoine* is whether the court of appeals erred in granting absolute, rather than qualified, immunity for the court reporter, even though her conduct was in violation of numerous court orders and statutory duties. *Antoine*, 61 U.S.L.W. 3309 (October 20, 1992).

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[1] The bulk of the facts and arguments presented in the Respondent's Brief in Opposition deal with the bailiffs' alleged motivation, the severity of their acts and the damage they caused. All of these issues are essentially irrelevant to the central question: Were the bailiffs performing a judicial function in investigating respondent? Thus, no specific response to the Brief in Opposition is required.

Both *Antoine* and this case address the question of whether absolute judicial immunity applies to court officials other than judges who participate in the judicial process. Both cases require an analysis of whether the court officials were engaged in judicial functions. Both cases may require addressing the question of whether conduct which violates court procedures or statutes can still be considered a judicial function and protected by absolute immunity, or whether such conduct is not merely in excess of the court official's jurisdiction, but in clear absence of his or her jurisdiction. Certainly a conclusion by this Court in *Antoine* on any of these issues would have a significant impact on the bailiffs' claims to absolute immunity in this case. More importantly, a decision affirming the Ninth Circuit in *Antoine* would seem to implicitly reverse the decision of the Sixth Circuit in this case, or at the very least, require its reconsideration.

It is respectfully requested that this Court, having already accepted *Antoine* for review, accept this case as well. Petitioners suggest that judicial economy would be served by consolidating the two cases on the merits and deciding them simultaneously, thus avoiding the possibility of conflicting results. In the alternative, this Court may wish to accept this case for review but withhold decision on one of the two cases pending a decision in the other. In any event, petitioners request that the Court

issue a writ of certiorari to the Sixth Circuit Court of Appeals to review its judgment in the instant case.

Respectfully submitted,

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